Supreme Court, U. S.
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No. 97-228

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1996

GAMMA-10 PLASTICS, INC.,

Petitioner,

vs.

AMERICAN PRESIDENT LINES, LTD.,
and AMERICAN PRESIDENT COMPANIES, LTD.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

PAGE

Table of Contents..... i

Table of Authorities..... iii

I. INTRODUCTION..... 1

II. APL'S FALSE STATEMENT OF THE CASE MUST NOT BE ALLOWED TO MISGUIDE THIS COURT INTO BELIEVING THAT THE QUESTIONS PRESENTED BY GAMMA-10'S PETITION ARE NOT AT ISSUE IN THIS CASE..... 2

A. The Evidence Showed That Gamma-10's Goods Were Of Superior Quality, And That The Buyer Rejected Them Because They Had Been Devanned, Not Because Of Any Inherent Defect. The Jury Did Not Find Otherwise..... 2

B. The Evidence Showed That Gamma-10 Had Buyers For The Goods. The Jury Did Not Find Otherwise..... 3

C. The Jury Did Not Find That APL Did Not Improperly Devan The Goods..... 4

III. THIS CASE UNQUESTIONABLY DOES PRESENT THE QUESTIONS RAISED IN THE PETITION FOR A WRIT OF CERTIORARI..... 5

PAGE

A. This Case Presents The First Question In The Petition 5

B. This Case Presents The Second Question In The Petition 8

INDEX TO APPENDIX

Photo of dumped cargo (Plaintiff's Ex. 231) RA1

Bill of Lading Number 155991 (Plaintiff's Ex. 32) RA2

Contract between China Kang Hua Investment and Gamma-10 (Plaintiff's Exhibit 281) RA3

Testimony of K.K. Cheng RA6

Memo to Mr. Joe Kopstein from K.K. Cheng Re: Bill of Lading (Plaintiff's Exhibit 170) RA8

TABLE OF AUTHORITIES

Cases:

PAGE

Allied Chem. Int'l Corp. v. Companhia de Navegacao Lloyd Brasileiro, 775 F.2d 476 (2d Cir. 1985)..... 9

Tan Hi v. United States, 94 F. Supp. 432 (N.D. Cal. 1950)..... 8

Statutes:

46 U.S.C. § 190..... 1,8,9

46 U.S.C. § 1300..... 1,8,9

I. INTRODUCTION.

Annually, more than $575 billion of cargo is shipped from the United States to foreign ports. The decision of the court of appeals in the case at bar means that carriers of such shipments will be exonerated from their own negligence and breach of contract in handling such shipments if the carriers deliver the shipments into the custody of government agents of the foreign ports in accordance with the law of the port. The decision of the court of appeals, therefore, will seriously weaken the standard of care given by carriers to a significant portion of American shipments abroad. Shippers cannot be expected to bargain for stronger contract terms with ocean carriers to remedy this problem, for the very premise of the Harter Act, 46 U.S.C. § 190 *et seq.*, and the Carriage of Goods by Sea Act, 46 U.S.C. § 1300 *et seq.*, is that shippers do not have sufficient bargaining power to overcome the strength of the carriers.

Thus APL cannot well argue against the exceptional national importance of the questions presented by Gamma-10's petition for a writ of certiorari. Instead, in opposing Gamma-10's petition, APL argues that the facts of the case at bar do not really raise the issues presented in Gamma-10's petition. According to APL, the jury found that APL did not improperly devan the cargo. Therefore, argues APL, for the reason that APL committed no wrongdoing, APL was not exonerated from any wrongdoing by its delivery of custody of the goods to a foreign port authority pursuant to the law of the port, and the issues presented by Gamma-10's petition are merely hypothetical. APL asserts that the evidence "proved" that Gamma-10's downfall was Gamma-10's own fault, because Gamma-10 was a defrauding purveyor of second-rate goods that nobody wanted.

If the Supreme Court agrees with Gamma-10 that the issues presented in Gamma-10's petition for a writ of certiorari are important, the Supreme Court must nevertheless be concerned by APL's argument that the jury's findings and the evidentiary proof render those issues merely hypothetical in the case at bar. Accordingly, Gamma-10 respectfully submits the following

Reply Brief for the purpose of demonstrating that the issues presented in the petition are indeed involved in the case at bar. To make this demonstration, Gamma-10 discusses the evidence and the jury's findings with more particularity than may be usual in connection with a petition for a writ of certiorari. Nevertheless, Gamma-10 knows no other way to establish the jarring falsity of APL's description of the jury's findings and of the underlying case. In order to decide Gamma-10's petition without misapprehension, this Court must know that APL's version of the case is not to be trusted.

II. APL'S FALSE STATEMENT OF THE CASE MUST NOT BE ALLOWED TO MISGUIDE THIS COURT INTO BELIEVING THAT THE QUESTIONS PRESENTED BY GAMMA-10'S PETITION ARE NOT AT ISSUE IN THIS CASE.

A. The Evidence Showed That Gamma-10's Goods Were Of Superior Quality, And That The Buyer Rejected Them Because They Had Been Devanned, Not Because Of Any Inherent Defect. The Jury Did Not Find Otherwise.

APL opens its Statement of the Case by asserting that "[t]he evidence proved ... that Gamma had misrepresented its recycled product," and that Gamma-10's losses were incurred, not because of APL's fault, but because Gamma-10's buyers refused to accept an inferior product. Respondents' Brief In Opposition (hereinafter "Resp. Br.") at 2. To assert that the evidence proved any such misrepresentation is itself a misrepresentation.

The fact is that customers and experts alike testified that the quality of Gamma-10's product was superior. *See* Trial Transcript (hereinafter "T"), Vol. XII, pp. 1444-45; deposition of Tom Mates, pp. 40-42, 51-52 (presented to the jury during trial). Further, there was no evidence that Gamma-10's product was "recycled." To the contrary, the expert testimony was that

Gamma-10's product was "virgin" material. *See* T Vol. XII, pp. 1440-41; T XXXI, p. 4559. It is true that APL presented an expert who initially testified that Gamma-10's product was recycled, but the expert later "backed up" from his testimony and agreed to a definition of "virgin alloy" that would encompass Gamma-10's product. *See* T of May 18, 1995, at pp. 59-60; *see also* T Vol. XXXI at pp. 4558-59.

The witnesses further testified that the only reason Gamma-10's buyer failed to accept the shipment was that the buyer (Vic International) and the consignee (China Kang Hua Investment) could not find the shipment.[1] The witnesses further testified that when they ultimately found the shipment, they found that the shipment had been decontainerized, exposed to the elements, and thereby contaminated. *See* T Vol. IV, pp. 665, 718-20; Vol. X, pp. 1276-1286; Plaintiff's Ex. 231 (photo of dumped cargo) reproduced in the Appendix hereto at RA1.

Plainly, APL has no business representing to this Court that "the evidence proved" that Gamma-10 exported recycled or inferior product, or that Gamma-10 had misrepresented its product, or that Gamma-10's losses were caused by the quality of its product rather than the degradation of the product that occurred after the product was prematurely devanned and exposed to the elements.

B. The Evidence Showed That Gamma-10 Had Buyers For The Goods. The Jury Did Not Find Otherwise.

APL further asserts that Gamma-10 did not have a buyer for the goods at the time of their arrival in Shanghai, or after: "There was no evidence that there even was a 'consignee' at any time

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[1]Gamma-10 had a multi-million dollar written contract with Vic International, prior to the shipments at issue, for Vic International to purchase the product. *See* T Vol. X at pp. 1239-47. In turn, Vic International had contracts to re-sell the products to various entities, including the consignee China Kang Hua Investment. *See id.* at pp. 1260; 1282-87.

prior to the ultimate sale in the summer of 1989, more than nine months after the goods had been delivered to Shanghai." Resp. Br. at 4; *see also* Resp. Br. at 2. The documents themselves prove the falsity of APL's assertion. Bill of Lading Number 155991 (Plaintiff's Ex. 32), reproduced in the Appendix hereto at RA2, is the bill of lading for the shipment that was supposed to arrive in containerized form in Shanghai. This Bill of Lading lists China Kang Hua Investment as "intermediate consignee." Further, a Vice President of Vic International testified that Vic International had $10 million worth of orders in hand from Chinese buyers for the goods that were to be shipped to Shanghai. *See* T Vol. X, pp. 1240-41; *see also* Plaintiff's Exhibit 281 (contract between China Kang Hua Investment and Gamma-10), reproduced in the Appendix hereto at RA3 - RA5.[2]

C. The Jury Did Not Find That APL Did Not Improperly Devan The Goods.

Most crucial of all, APL repeatedly asserts that the jury found, based on solid evidence, that APL or its agents did not improperly devan the goods. These assertions, too, are false. Because of their significance to APL's legal argument, Gamma-10 will address APL's assertions in this regard in the next section of this Reply Brief.

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[2]APL also mischaracterizes Gamma-10's claims. According to APL, Gamma-10 claimed only that APL lost Gamma-10's cargo. *See* Resp. Br. at 1, 2. In reality, Gamma-10 also claimed that APL caused damage to Gamma-10's cargo by devanning the cargo and by abusing its control over the cargo after delivery of custody to the Shanghai port authority. *See, e.g.*, Jury Instruction No. 22, contained in the Appendix to the Petition for Writ of Certiorari at A21. Further, APL states that only Jury Instruction 21 is at issue here, when in fact Jury Instruction 21A also exonerated APL from its duties. *Compare* Resp. Br. at 6-7, *with* Appendix to Petition for Writ of Certiorari at A19-A20.

For purposes of the Statement of the Case, the relevancy of APL's false assertions is not so much APL's falsity as it is the existence of more-than-substantial evidence (unmentioned by APL) on the basis of which the jury could have found, if not for the trial court's exculpatory instructions, that APL improperly devanned the goods and thereby caused damage to Gamma-10. Thus, as will be discussed below, this case does involve the exceptionally important commercial questions presented by Gamma-10's petition.

III. THIS CASE UNQUESTIONABLY DOES PRESENT THE QUESTIONS RAISED IN THE PETITION FOR A WRIT OF CERTIORARI.

A. This Case Presents The First Question In The Petition.

Gamma-10 seeks this Court's review of the decision of the court of appeals for the purpose of reviewing two questions. The first question is whether, in accordance with the decision of the court of appeals, an ocean carrier is exonerated from its own negligence and breach of contract in the shipment of cargo to a foreign port if the ocean carrier delivers the cargo into the custody of government agents in accordance with the law of the foreign port. For obvious reasons, the decision of the court of appeals, if it remains the law, will have a tremendous negative impact on the standard of care given by ocean carriers to the $575,000,000,000 of cargo shipped every year from the United States to foreign ports.

In the case at bar, Gamma-10 (the shipper) alleges that APL (the carrier) was negligent and in breach of contract because APL improperly "devanned" the cargo before delivering the cargo into the custody of the foreign governmental agents. In its brief in opposition to Gamma-10's Petition for Writ of Certiorari, APL argues that the issue of exoneration from negligence and breach of contract is not presented by the case at bar because, APL

repeatedly asserts, the jury found that APL had not improperly devanned the cargo. *See* Resp. Br. at i, 3, 5, 8, 9-10.

APL's assertion is demonstrably false. The jury did **not** find that APL had not improperly devanned the cargo. Thus the first question set forth in Gamma-10's petition for a writ of certiorari is definitely present in this case.

As is evident on its face, the jury's Special Verdict Form, reproduced at pages 1 and 2 of Respondents' Appendix, contains no finding one way or the other as to whether APL improperly devanned the goods. Accordingly, when APL asserts to this Court that "the jury resolved against Gamma" the contention that "APL improperly devanned the containers" (Resp. Br. at 2-3), APL is demonstrably wrong. *See also* Resp. Br. at 5, 8, 9-10.

True it is that the jury found that APL was not negligent and that APL did not breach its contract. Respondents' App. 1, 2. But these findings were made pursuant to jury instructions that in essence told the jury that APL had no duty concerning the cargo if APL delivered the cargo to foreign officials in accordance with foreign law. Without a duty, there can be no negligence or breach of contract. Because it was uncontested that APL did deliver the cargo to foreign officials in accordance with foreign law, the jury, in following the instructions at issue here, could not have found that APL violated any duty and thus could not have found that APL was negligent or in breach of contract. *See* Petition For Writ Of Certiorari at 4-8; Motion And Brief *Amicus Curiae* Of Professor Thomas J. Schoenbaum at 5.

Thus the jury's findings of no negligence and no breach of contract were not tantamount to a finding that APL did not improperly devan the cargo. Rather, because they presumably were made pursuant to the court's exculpatory jury instructions, the jury's findings of no negligence and no breach of contract give no indication one way or the other on the crucial issue of whether in fact APL improperly devanned the goods.

Yet there unquestionably was sufficient evidence for the jury to find that APL had dumped the goods before they were in the custody of the Shanghai Port Authority. APL's own documents

showed that APL had devanned the goods prior to their arrival in Shanghai. *See* Plaintiff's Trial Exhibits 38, 41, 42, 43, and 45; T Vol. IX, pp. 1108, 1110-11, 1114, 1116. Additionally, APL's CEO testified that what APL now calls "erroneous computer entries" (Resp. Br. at 3) meant that the containers "had been emptied out" and had arrived empty in Shanghai, and that no APL employee ever had input into the computer a report that a container was empty when it actually was full. *See* Deposition of Joji Hayashi (presented to the jury at trial), pp. 46-52. Further, APL's PRC manager, K.K. Cheng, admitted that he did not know who broke open the seals on the containers, that the containers were emptied in Hong Kong before going to Shanghai, and that he had "no factual basis for doubting the accuracy of any of the information in that [computer] report." *See* T of May 15, 1995, at p. 5; T of May 16, 1995, at p. 53; Deposition of K.K. Cheng at pp. 33-35 (read to the jury).[3] The evidence also included uncontroverted testimony that APL's agent had expressly ordered and caused Chinese authorities to devan (dump) a related shipment in Whampoa, China, prior to delivery and in violation of Chinese law. *See* T of June 17, 1993, at pp. 1190-1194; 1236 (read to the jury).

Thus it is clear that the evidence in this case would sustain a verdict that APL had improperly devanned the cargo, and that the devanning caused the cargo to be damaged. The jury was not asked to decide whether APL had improperly devanned the cargo, however, but was instead instructed that APL's delivery of the goods into the custody of port authority in accordance with port law exonerated APL from liability "for any damage or loss that occurred after the port authority took possession." Jury Instruction 21; *see also* Jury Instruction 21A, appended to the

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[3]APL's evidence to the contrary was incredibly weak. APL cites (Resp. Br. at 3) the direct testimony of K.K. Cheng and Chen Chou Hua. Both witnesses admitted on cross that in reality they had no personal knowledge about the shipments at issue. *See* T of April 10, 1995, at 4-8; T Vol. XXIX at 4282-83.

Petition for Writ of Certiorari at A19, A20. The problem with the jury instructions affirmed by the court of appeals is that the instructions required the jury to find a "proper delivery" regardless of whether Gamma-10's cargo was removed from the sealed containers by APL in Hong Kong (or elsewhere) as long as the cargo was ultimately delivered into the custody of the Chinese port authority in Shanghai and the ultimate loss or damage was accomplished while the goods were in the custody of the port authority.

This case, therefore, very much does present the exceptionally important question whether the *Tan Hi* doctrine may be invoked to insulate a carrier from liability under the Harter Act and the Carriage of Goods by Sea Act for subsequent damage to goods delivered into the custody of government agents in accordance with the law of the foreign port, when the damage is caused by the carrier's own mishandling of the goods prior to their delivery into the custody of the local government agents. When APL asserts otherwise, APL is demonstrably wrong.

B. This Case Presents The Second Question In The Petition.

The second question presented by Gamma-10's petition for a writ of certiorari is whether a carrier should be insulated from liability for subsequent damage to goods delivered into the custody of government agents in accordance with the law of the foreign port, when the carrier retains control (but not custody) over the goods at all times.

In arguing that this second question is not present in the case at bar, APL suggests that there is no "evidence which would support the contention that APL retained 'control' of the goods after delivery to the container yard in Shanghai." Resp. Br. at 16-17. In fact, APL admitted that the Shanghai port authority acted as its "agent," that APL had the power to instruct its "agent" as to the disposition of goods, and even that its use of its power to cause its "agent" to hold Gamma-10's goods was

"illegal." *See* T of May 16, 1995, at p. 49; *id.* at p. 82, contained in the Appendix hereto at RA6 - RA7; T Vol. XV p. 2026; Plaintiff's Ex. 170, contained in the Appendix hereto at RA8. Plainly, therefore, APL had control over the goods.[4]

Finally, APL suggests that this Court should not attempt to define any aspect of the duty of proper delivery imposed by the Harter Act, 46 U.S.C. § 190 *et seq.*, and the Carriage of Goods by Sea Act, 46 U.S.C. § 1300 *et seq.* Resp. Br. at 17-18. APL argues that the issue of proper delivery is not present in this case and could only be decided on an advisory and hypothetical basis, *id.*, but, as discussed above, the issue of what constitutes proper delivery to a foreign port is very much present in this case.

APL also argues that the issue of proper delivery is one of contract, custom, and port usage. *Id.* APL is wrong as a matter of law. The standard of "proper delivery" is one set by the Congress in the Harter Act and the Carriage of Goods by Sea Act. The standard cannot be undermined by contract, custom, or port usage. *See Allied Chem. Int'l Corp. v. Companhia de Navegacao Lloyd Brasileiro*, 775 F.2d 476 (2d Cir. 1985).

APL then contradictorily argues, first, that the standard of "proper delivery" is too broad and varied to admit of definition, and, second, that the definition of "proper delivery" is for

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[4]APL also argues that Gamma-10 has not previously raised any claim that APL is liable to Gamma-10 because of APL's control over the persons who took custody of the cargo in Shanghai. Resp. Br. at 17. In fact, however, Jury Instruction No. 22, reprinted in the Appendix to the Petition For Writ Of Certiorari at A21, states that Gamma-10 alleges that APL's conduct was negligent because "American President Lines **or its agents**" undertook or failed to undertake certain actions (emphasis supplied). Gamma-10's evidence, as discussed above, was that the persons at the Shanghai port authority who took custody of the cargo did so as APL's agents, and were subject in fact to APL's control. APL's attorney himself argued the control issue in his closing argument. *See* T Vol. XXXIII at p. 4720.

Congress, not this Court. Resp. Br. at 18. The standard of "proper delivery" was established by Congress in the Harter Act and the Carriage of Goods by Sea Act. It is the function of the judicial branch to interpret that standard.

The court of appeals has interpreted the standard of "proper delivery" to mean that carriers are exonerated from their own negligence and breach of contract if they deliver goods to foreign port authorities in accordance with foreign port law. This interpretation is at odds with the statutes, with other courts of appeals, and with the self-evident commercial need to prevent future misconduct by carriers in shipments that may total more than $575,000,000,000 per year. There is, therefore, a pressing need for this Court to give its authoritative reading of the statutory standard.

Respectfully submitted,

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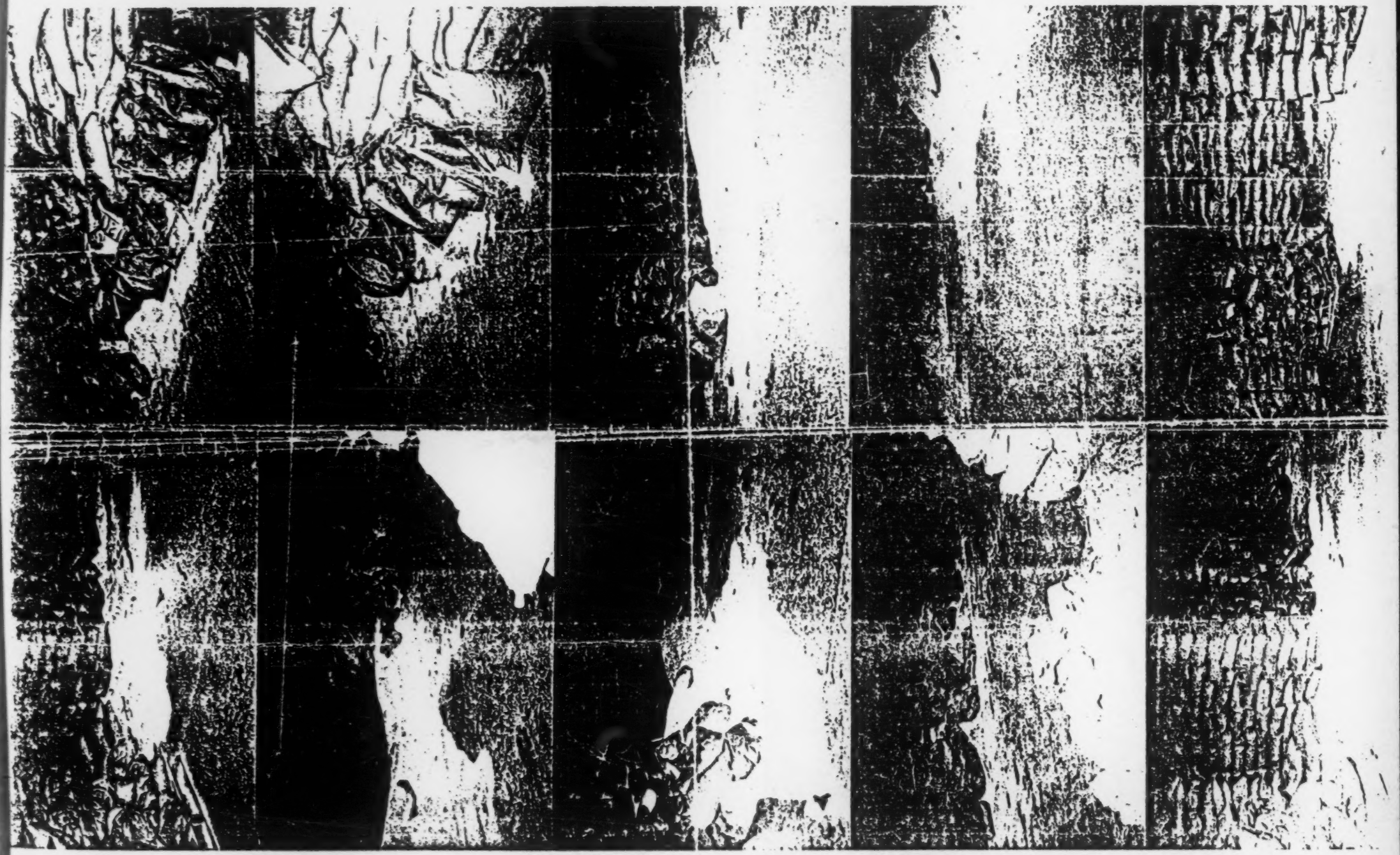
RA1



BEST AVAILABLE COPY

AMERICAN PRESIDENT LINES, LTD. — OCEAN BILL OF LADING

SHIPPER (Principal or Seller licensee and full address)

GAMMA-IC PLASTICS, INC.
10026 UNIVERSITY AVE. N.W.
MINNEAPOLIS, MN 55433

BOOKING NUMBER: 155991

B/L NUMBER: 155991

EXPORT REFERENCES

CONSIGNEE (Name and Full Address/Non-negotiable Unless Consigned to Order.)
(Unless provided otherwise, a condemnation "To Order" means To Order of Shipper.)

TO ORDER

FORWARDING AGENT (References, F.M.C. No.)

POINT AND COUNTRY OF ORIGIN OF GOODS

U.S.A. THC

NOTIFY PARTY/INTERMEDIATE CONSIGNEE (Name and Full Address)

CHINA KANG HUA INVESTMENT & IMP & EXP
CORP SHANGHAI BRANCH
RM 56324 JING-JIANG CLUB
SHANGHAI CHINA

ALSO NOTIFY (Name and Full Address) /DOMESTIC ROUTING/
EXPORT INSTRUCTIONS/PIER — TERMINAL/ONWARD ROUTING
FROM POINT OF DESTINATION

RA2

INITIAL CARRIAGE (MODE)*	PLACE OF RECEIPT*
	ATLANTA
EXPORT CARRIER (Vessel, voyage, & flag)	**PORT OF LOADING**
PRES. MONROE V054 USA	LOS ANGELES
PORT OF DISCHARGE	**PLACE OF DELIVERY***
SHANGHAI	SHANGHAI, PRC

PARTICULARS FURNISHED BY SHIPPER

MKS.& NOS./ CONTAINER NOS.	NO. OF PKGS.	H M	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMEA
	4400		BAGS UA39-340C SLAC CY/CY POLYPROPYLENE RESIN INJECTION GRACE (CC-POLYMER) GRADE GP-10	103294 KG 227724 LB	181. 640C.
			103.294 MT GROSS WEIGHT 101.2 MT NET WEIGHT		
			FREIGHT PREPAID		
CTR NBR	**SEAL NBR**		T/S MODE QUANT/TYPE		
APLU7C1555	5786		C4C CY/CY 880 BAGS		
APLU7C5245	5771		C4C CY/CY 880 BAGS		
APLU8C2185	5785		C4C CY/CY 880 BAGS		
APLU8C3101	SCI9517		D4C CY/CY 880 BAGS		
SCXU5C1204	9512		C4C CY/CY 880 BAGS		

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PEOPLE'S REPUBLIC OF CHINA DIVERSION CONTRARY TO U.S. LAW PROHIBITED. ** NON-NEGOTIABLE
ON SCAC PRES. MONROE V054 SEP. 09, 1988

B/L TO BE RELEASED AT CHI — OCEAN FREIGHT PAYABLE AT CHICAGO, IL

FREIGHT RATES CHARGES, WEIGHTS AND/OR MEASUREMENTS (SUBJECT TO CORRECTION)	PREPAID U.S. $	COLLECT U.S. $	Local Currency
C1 103.292KT @ 162/KT	16733.30		

EXHIBIT Plaintiff 32 3-90-CV-408

PLAINTIFF'S EXHIBIT 32 3-90-CV-408

0145

CS	DEST	CC	TOTAL PREPAID	$	16733.30		
Vessel	Voyage	Office	TOTAL COLLECT				

01437 SDS HJC SEA Y

The undersigned Carrier hereby acknowledges the receipt (condition or exception or other as noted to contain the Goods described above in external good order and condition unless noted. The Shipper agrees, and the Consignee, person purchasing this instrument for value only, or otherwise having an interest in or control over the vessel, cargo, carriage of the Goods are subject to all the terms and as set forth and incorporated by reference on the reverse hereof, whether written, typewritten

A set of 3 originals of this bill of lading issued by said Carrier. Upon surrender to of any one negotiable bill of lading, properly all others shall stand void.

AMERICAN PRESIDENT LINES

By: Authorized Rep. of Carrier o

Date and Place Issued: OCT. 4, CHICAGO,

中国保华大系公司

上海分公司

CHINA KANGHUA INVESTMENT & IMP & EXP CORP SHANGHAI BRANCH

RA3

TO: MR. JOSEPH KOPSTEIN-PRESIDENT
GAMMA-10 PLASTICS INC.
FAX: (612)921-2424 USA

FM: BAI XIAO JIA-GENERAL MANGER
CHINA KANGHUA INVESTMENT & IMP. & EXP. CORP.
SHANGHAI BRANCH

DEAR JOSEPH

WE WERE GLAD TO MEET YOU AND VICTOR CHIANG IN SHANGHAI AT 28/29 NOVEMBER.

HERE ARE THE SUMMARY, DIGESTED FROM OUR VARIOUS MEETING & CONVERSATION SINCE SEPT. 1988.

1. KANGHAU WILL ORDER 5 CONTAINERS GP-10 SUBJECT TO SHANGHAI SEND-DE PLASTIC FACTORY'S TEST REPORT.
2. GAMMA-10 WILL AUTHORIZE TO RELEASE CONTAINERS TO KANGHUA TO AVOID FURTHER DEMURRAGE & CUSTOM DUTY DELAY PENALTIES.
3. KANGHUA WILL PRE-PAY THE CUSTOM DUTY & OTHER MISC. COSTS DIRECTED TO THE RELAESE OF GOODS FROM SHANGHAI PORT.
4. SHANDE WILL RUN THE TEST & ISSUE TEST REPORT WITHIN 10 DAYS AFTER THEY RECEIVE 10 BAGS SMAPLE.
5. KANGHUA AGREES TO BANK WIRE TRANSFER THE TOTAL AMOUNT TO GAMMA-10 'BANK ACCOUNT AFTER RECEIPT OF TEST REPORT APPROVAL ASAP.
6. GAMMA-10 AGREES GP-10 AT PREVILEGED PRICE TOKANGHUA EVERY MONTH FOR THE NEXT 12 MONTH BEGINNING DEC. 1988.
7. KANGHAU WILL PURCHASE UPON CUSTMR'S FURTHER REQUIRMENT GP-10 FROM GAMMA-10 FOR THE NEXT 12 MONTHS STARTING DEC. 88.
8. 5 CONTAINER OF GP-10 PRICE WILL BE SET AT THE MIDDLE PP CHINA MARKET PRICE. TODAY THE PRICE WILL BE BETWEEN ¥8,000.00-9,000.00/MT, APPROX. US$1,050.00-1,115.00. KANGHUA CAN SELL ABOVE THE MIDDLE PP MARKET PRICE. GAMMA-10 AGREES TO SPLIT 50% FOR THE ABOVE PORTION.
9. KANGHUA WILL HANDLE FOREIGN EXCHANGE THE RATE AVLAILE CHINA FOREIGN

中國康華实業公司

上海分公司

RA4

CHINA KANGHUA INVESTMENT & IMP & EXP CORP SHANGHAI BRANCH

EXCHANGE ADJUSTED MARKET RATE.

* OUR KANGHUA CORP. IS ONE OF THE LARGEST COMPANY UNDER DIRECT SUPERVISION O THE STATE DEPARTMENT . OUR BANKERS THE BANK OF CHINA. IN CONCLUSION, IT I MY GREAT PLEASURE TO BEGIN DOING BUSSINESS WITH YOU. WE EXPECT AND DESIRE VERY LONG TERM AND MUTUALLY BENIFICIAL RELATIONSHIP.

SINCERELY YOURS

GENERAL MANGER.
TECHNICAL DEPT.
KANGHUA CORP.

INTRODUCTION

[illegible]

[illegible]

[illegible]

KANGHUA'S IMPORTS.

1. Electronic Equipment:
   - Computer system equipment and spares and computer instrument of various specifications
   - Wire and wireless communication instrument and peripheral devices.
2. Instruments and Meters.
   - Electronic instruments
   - Optical instruments
   - Laboratory instruments
   - Meteorological instruments
   - Measure instruments
   - Medical control instruments and meter
   - Instruments and meters of other kind
3. Electronic components and developing digital circuits.
4. Product of machinery and equipment
5. Medical equipment and medicine
   - Medicines
   - Pharmaceutical machines and packing materials.
   - Medical appliances
   - Medical equipment and hospital equipment
6. Appliance of daily life for the handicapped
7. Traffic and entertainment equipment to the handicapped.
8. Sound and video recording equipment used about TV system.
9. Equipment for the enterprises in the Fund for the handicapped.

KANGHUA'S EXPORTS:

1. Leather and leather products
2. Garments (limited to countries and region without import quota restrictions)
3. Canned food (except mushroom and raw and canned mushrooms.
4. Preserved and dried fruits
5. Drugs
6. Hand-plaited straw articles, basketry and bamboo, wicker and rush, clay figures, metal and chinaware, calligraphy and painting
7. Chemical appliances
8. Cosmetics
9. Recreation and sports articles
10. Computer, computer peripherals and simple software
11. Electrical special equipment, communication equipment, electrical components and parts, optical material
12. Medical apparatus and recovering equipment
13. Plastic & rubber finished products
14. Glass, marble slab and ceramic
15. Slag cinder, silica, waste fog and iron slag wool and mineral wool
16. Various incense coils, burning resistor and electric mosquito
17. Snake venom, pearl, bear and snake gallbladder
18. Raw refined oil
19. Products produced by the criminals' labor for the handicapped

K.K. CHENG-CROSS

[p. 82] Yes, Page 38 of your deposition from just January of this year. I have it on videotape and I'm going to ask you to follow along and ask if you made the following statement under oath in response to that question.

Page 38, Line 13.

You were asked the following questions and you gave the following response.

(The video deposition commenced playing at the above-referenced page and line, and concluded, and the Cross Examination continued, as follows:)

BY MR. SCOTT JOHNSON:

Q Now, those are the statements you made under oath in January of this year. Isn't it true, sir?

A Yes.

Q So the position that you took in 1988 that the cargo in other ports in China would not – would have to be paid for before even a small portion of the Shanghai cargo was released, you understood that to be an illegal position under American maritime law. Correct?

A Yeah, we are talking about the two shipment in China. Am I right?

One is in Shanghai, one is in Whampoa.

Q Yes.

A Okay.

Q My question to you is: You understood that under

* * *

EXHIBIT

Plaintiff 170

[LOGO]
AMERICAN PRESIDENT LINES, LTD.

TO: MR. JOE KOPSTEIN
C/O ROOM 2803
SHANGHAI HILTON
FAX NO. 21-55-3848

RE: B/L 155769 & 155991

HAVE CONTACTED OUR NAM OFFICE REGARDING YR REQUEST OF RELEASING 3 M/T OUT OF B/L 155769 TO YR BUYER IN GUANGZHOU AND 100 M/T OUT OF B/L 155991 IN SHANGHAI.

APL NEEDS U TO SETTLE ALL THE BILLS (INCLUDING STORAGE COSTS) BEFORE WE CAN INSTRUCT OUR AGENT IN PRC TO RELEASE SUBJECT SHIPMENT.

RGDS.

KK CHENG

EXHIBIT NUMBER Cashman 20
DATE 3 Aug 92
COURT REPORTER
RITA GOURLAY